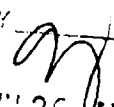


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION  
CASE NO. 00-6025-CIV-MIDDLEBROOKS  
MAGISTRATE JUDGE: BANDSTRA

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ADVOCATES FOR THE DISABLED,  
INC., a Florida not-for-profit corporation,  
PETER SPALLUTO, individually, and  
ERNST ROSENKRANTZ, individually,

Plaintiffs,

vs.

SEA CASTLE RESORT MOTEL  
PARTNERSHIP, a Michigan General  
Partnership, and MICHELE BROWNELL,  
General Manager of Sea Castle Resort Inn,

Defendants.

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**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT,  
MICHELE BROWNELL'S MOTION TO DISMISS AMENDED COMPLAINT**

The Plaintiffs, ADVOCATES FOR THE DISABLED, INC., PETER SPALLUTO and ERNST ROSENKRANTZ, by and through their undersigned counsel, and pursuant to the provisions of Rule 7.1C of the Local Rules of the United States District Court for the Southern District of Florida file the following Memorandum of Law in Opposition to the Defendant, MICHELE BROWNELL's Motion to Dismiss Amended Complaint.

***Memorandum of Law***

The Defendant, MICHELE BROWNELL, moves this Court to Dismiss the Complaint filed by the Plaintiffs brought pursuant to the provision of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. asserting that the Plaintiff has failed to state a claim upon which relief can be granted as the Defendant, BROWNELL, is not a proper party Defendant. Because the allegations of the Amended Complaint are sufficient to state a claim against the Defendant, MICHELE

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BROWNELL, for a violation of the provisions of Title III of the Americans with Disabilities Act, and because genuine issues of material fact exist which preclude this Court's entering a Summary Judgment, the Court should deny the Motion.

For purposes of a Motion to Dismiss, this Court must view the allegations of the Complaint in a light most favorable to the Plaintiff, consider the allegations of the Complaint as true, and accept all reasonable inferences therefrom. Jackson v. Okaloosa County, 21 F. 3<sup>rd</sup> 1532, 1534 (11<sup>th</sup> Cir. 1994). A Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts that would entitle him to relief. Connolly v. Gibson, 355 U.S. 41, 45-46 (1957). A dismissal for failure to state a claim, pursuant to provisions of Rule 12(b)(6) of the Federal Rules of Civil Procedure is only appropriate if it appears to a certainty that the Plaintiffs would not be entitled to relief under any set of fact which could be proved in support of their claim. Canadyne-Georgia Corp. v. NationsBank, N.A. (South), 183 F. 3<sup>rd</sup> 1269, 1275-1276 (11<sup>th</sup> Cir. 1990). Here, the allegations of the Complaint establish that the Defendant, MICHELE BROWNELL, is an "operator" of the place of public accommodation sufficient to impose liability upon her pursuant to 28 U.S.C. § 12182(a) and 28 C.F.R. § 36.201(b). The Complaint alleges that she is the General Manager and the reasonable inference therefrom is that the Defendant, MICHELE BROWNELL, has operational authority over the place of public accommodation.

The Defendant, MICHELE BROWNELL, also requests this Court to consider its Motion to Dismiss as a Motion for Summary Judgment. The Defendant has attached an Affidavit in Support of the Motion to Dismiss asserting that she was employed in the capacity of a Phone Desk Clerk. While the Plaintiffs have not had an opportunity to conduct discovery in that regard and, therefore,

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on that basis alone the Motion for Summary Judgment should be denied, attached as Exhibit "A" to this Memorandum is a copy of the business card from the Defendant, MICHELE BROWNELL, asserting that, contrary to her Affidavit claiming her capacity is only one of a Desk Clerk, she is, in fact, the General Manager of the Sea Castle Resort Inn.

In conclusion, this Court should deny the Defendant, MICHELE BROWNELL's Motion to Dismiss, or if the Court treats the Motion to Dismiss as one for Summary Judgment, should deny the Motion for Summary Judgment and permit the Plaintiffs to take the Deposition of the Defendant, MICHELE BROWNELL, to further establish her operational authority over the place of public accommodation.

*Certificate of Service*

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S.

Mail on this the 22<sup>nd</sup> day of June, 2000 to:

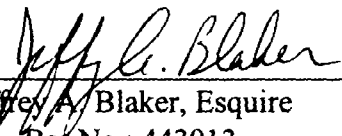
Amy J. Galloway, Esquire  
Michael P. Hamaway, Esquire  
Duke, Mullin & Galloway, P.A.  
1700 East Las Olas Boulevard, PH-1  
Ft. Lauderdale, Florida 33301

Jeffrey B. Smith, Esquire  
1401 East Broward Boulevard, Suite 206  
Ft. Lauderdale, Florida 33301

FULLER, MALLAH & ASSOCIATES, P.A.  
Attorney for Plaintiffs  
1111 Lincoln Road, Suite PH-802

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Miami Beach, FL 33139  
(305) 538-6483 - Dade  
(954) 463-6570 - Broward  
(305) 534-9894 - Fax

By:   
Jeffrey A. Blaker, Esquire  
Fla. Bar No.: 443913

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**Sea Castle**  
**RESORT INN**

Michele Brownell  
*General Manager*

(954) 941-2570 • FAX (954) 941-3150  
730 N. Ocean Blvd • Pompano Beach, FL 33062